is an established doctrine that the banking business, owing to its intimate relation to the fiscal affairs of the people, is subject to the police power.[10] It is submitted that the requirement of contributions to a safety fund differs only in degree from recognized banking regulations, and is not so unreasonable as to merit the judicial veto.[11] If the correct ground for legislative interference is kept in mind, there is no reason to fear the wholesale regulation of private business which the circuit court so vividly depicts. Nor should the statute in question be considered an arbitrary regulation merely because there may be some other business which should be similarly controlled.[12]

It is objectionable, however, on another ground. To provide for compulsory incorporation is unreasonable. Since incorporation is open to all, there is not a total prohibition of the business; but as banking is recognized as a legal calling,[13] even such a partial inhibition of individual liberty can be justified only because the character of the business allows it. That very circumstance, however, justifies the regulation of individuals as well as corporations so engaged. It follows, therefore, that the provision is an unwarrantable exercise of the police power,[14] since the means is unnecessary to accomplish the legislative purpose, and since it is unduly oppressive of individuals.[15]

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THE POWER OF MUNICIPAL CORPORATIONS TO EXPEND FUNDS IN THE INVESTIGATION OF MUNICIPAL PROBLEMS. — An important extension in the incidental powers of a municipal corporation is recognized in a recent case. The common council of the city of Detroit placed a sum of money, for use in investigating the local street railway problem presented by the pending expiration of certain franchises, at the disposal of the mayor, who appointed to assist him a committee of fifty citizens. The court restrained any payment from this fund on the grounds that the method of payment was contrary to mandatory provisions of the city charter, and that the appropriation was for the purpose of aiding the mayor rather than the common council. But the dissenting opinion on this latter point and the *dictum* of the majority give full recognition to the right of the council to expend funds in collecting information or advice regarding municipal matters. *Attorney General ex rel. Maguire* v. *Murphy*, 122 N. W. 260 (Mich.).

The power of the legislative branch of a municipal corporation to delegate any duty of investigation, such as that of examining the validity of elections to its membership, to a committee of its own members whose

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[10] Blaker *v.* Hood, *supra;* State *v.* Ritchcreek, *supra. Cf.* Commonwealth *v.* Vrooman, 164 Pa. 306.

[11] Noble Bank *v.* Haskell, 99 Pac. 590 (Okl.). In this case a similar safety fund requirement was upheld. In a recent decision in the district court at Topeka, Kansas, as yet unreported, the court held the statutory provision unconstitutional. In several earlier decisions the constitutionality of similar statutes was not questioned. People *v.* Walker, 17 N. Y. 502; Elwood *v.* Treasurer of Vermont, 23 Vt. 701. See 22 HARV. L. REV. 231.

[12] Seaboard Airline Ry. *v.* Seegers, 207 U. S. 73; Heath *v.* Worst, 207 U. S. 338.

[13] Bank of Augusta *v.* Earle, 13 Pet. 519, 596.

[14] State of South Dakota *v.* Scougal, 3 S. D. 55. *Contra*, State of North Dakota *v.* Woodmansee, 1 N. D. 246; Commonwealth *v.* Vrooman, *supra.*

[15] Lawton *v.* Steele, *supra.*

expenses are paid out of the city treasury is admitted.[1] But although it is doubtless the practice of city councils to pay the expenses incurred by committees in investigating general municipal problems, as well as the fees of experts who aid the local superintendents and engineers, the legal limitations on such expenditures are not adequately determined by the few adjudicated cases. Certainly the fulfillment of a project so studied must lie within the power of the city.[2] And the matter should be one requiring scientific investigation beyond the ordinary knowledge of any city official; for obviously a municipal corporation cannot expend the public funds in educating its officials. To what extent an inquiry may be conducted — whether it may be local only, or may include the study of methods in other municipalities — must be determined by the common-law requirement that all ordinances within the powers of a municipality to enact shall be reasonable.[3] Perhaps the personnel of the committee should be left under this same broad regulation — although here the courts have rendered some assistance in holding that the traveling expenses of a committee consisting of the entire city council, appointed to visit neighboring cities for the investigation of various municipal matters, cannot be paid from the public funds.[4] In general it may be said that if a matter lies within the province of an established city department (fire, water, police, etc.) the head of the department would be the proper person to conduct an investigation at the instance of the city council; otherwise the standing committee of the council would be an appointment which the courts would recognize as reasonable. And outside assistance for the benefit of the departments or committee should take the form of expert advice, bearing the same relation to the knowledge of the department or council that the testimony of an expert does to the knowledge of the jury.[5] Such assistance could have been given in the principal case by the committee of citizens, which was presumably composed of men of broad business knowledge.

It is submitted that the courts, influenced by the political fact that the government of a modern city resembles the management of a large business enterprise, will recognize in municipal corporations an implied power to make reasonable appropriations for purposes such as the one here considered, which are necessary for efficiency in any business corporation, and which are not contrary to any charter requirement that all municipal funds must be expended for the public benefit.

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THE DOCTRINE OF MUTUALITY IN SPECIFIC PERFORMANCE. — As a result of the many early exceptions and later qualifications, little now remains of the once recognized rule that to gain specific performance there must have been mutuality of equitable remedy at the time of making the contract.[1] The true principle would seem to be, that equity will not compel

[1] State *v.* Hayes, Mayor, 50 N. J. L. 97.
[2] See Briggs *v.* Mackellar, 2 Abb. Prac. (N. Y.) 30, 58.
[3] Hawes *v.* Chicago, 158 Ill. 653.
[4] James *v.* City of Seattle, 22 Wash. 654.
[5] Lincoln *v.* The Saratoga, etc., Railroad Co., 23 Wend. (N. Y.) 425.

[1] FRY, SPECIFIC PERFORMANCE, 3 ed., 215; Norris *v.* Fox, 45 Fed. 406.